SENATE COMMITTEE ON PUBLIC SAFETY

Senator Loni Hancock, Chair
2015 - 2016 Regular

Bill No:	SB 382	**Hearing Date:**	May 12, 2015
Author:	Lara		
Version:	April 20, 2015		
Urgency:	No	**Fiscal:**	No
Consultant:	AA		

Subject: ***Juveniles: Fitness Criteria***

HISTORY

Source: Human Rights Watch

Prior Legislation: SB 1151 (Kuehl) – Vetoed, 2004

Support: The Anti-Recidivism Coalition; Alliance for Boys and Men of Color; Annie E. Casey Foundation Juvenile Justice Strategy Group; Asian Americans Advancing Justice - Asian Law Caucus; Asian Americans Advancing Justice – Los Angeles; California Catholic Conference; California Public Defenders Association; Californians United for a Responsible Budget; Campaign for Youth Justice; Center on Juvenile and Criminal Justice; Children Now; Children's Defense Fund California; East Bay Children's Law Offices; Ella Baker Center for Human Rights; Friends Committee on Legislation of California; Los Angeles Regional Reentry Partnership; National Center for Youth Law; National African American Drug Policy Coalition; National Employment Law Project; Office of Restorative Justice of the Archdiocese of Los Angeles; Post-Conviction Justice Project – USC Gould School of Law; Root and Rebound; Youth Justice Coalition; Youth Law Center; Policy Link; several individuals

Opposition: None known

PURPOSE

The purpose of this bill is to further describe factors the court may consider in determining whether a person is fit or unfit for juvenile court, as specified.

Current law generally provides a process for the juvenile court to determine whether minors who are 14 years of age and older and alleged to have committed a crime are fit or unfit for juvenile court. (Welfare and Institutions Code ("WIC") § 707.) Depending upon the age of the minor, the alleged offense and the minor's offense history, the minor may or may not be

presumed unfit for juvenile court; where a minor is presumed to be unfit for juvenile court, the burden of rebutting the presumption is on the child, to demonstrate by a preponderance of the evidence. (*Id.; See also* Ca. Rules of Court, rule 1483.)

Under current law, in any case where the juvenile court determines fitness, the court must examine whether the minor would or would not be amenable to the care, treatment, and training program available through the juvenile court, based upon an evaluation of the following criteria:

1. The degree of criminal sophistication exhibited by the minor.
2. Whether the minor can be rehabilitated prior to the expiration of the juvenile court's jurisdiction.
3. The minor's previous delinquent history.
4. Success of previous attempts by the juvenile court to rehabilitate the minor.
5. The circumstances and gravity of the offenses alleged in the petition to have been committed by the minor. (WIC § 707(a)(1); (2); 707(c).)

This bill would revise these statutory provisions to include discretionary factors the court may consider in making these determinations, as follows:

- With respect to the degree of criminal sophistication exhibited by the minor (factor #1 above), specify the following in statute:

  > ". . . the juvenile court may consider any relevant factor, including, but not limited to, the minor's age, maturity, intellectual capacity, and physical, mental, and emotional health at the time of the alleged offense, the minor's impetuosity or failure to appreciate risks and consequences of criminal behavior, the effect of familial, adult, or peer pressure on the minor's actions, and the effect of the minor's family and community environment and childhood trauma on the minor's criminal sophistication."

- With respect to whether the minor can be rehabilitated prior to the expiration of the juvenile court's jurisdiction (factor # 2 above), specify the following in statute:

  > ". . . the juvenile court may consider any relevant factor, including, but not limited to, the minor's potential to grow and mature."

- With respect to the minor's prior delinquent history (factor # 3 above), specify the following in statute:

  > ". . . the juvenile court may consider any relevant factor, including, but not limited to, the seriousness of the minor's previous delinquent history and the effect of the minor's family and community environment and childhood trauma on the minor's previous delinquent behavior."

- With respect to the success of previous attempts by the juvenile court to rehabilitate the minor (factor # 4 above), specify the following in statute:

  > " . . . the juvenile court may consider any relevant factor, including, but not limited to, the adequacy of the services previously provided to address the minor's needs."

- With respect to the circumstances and gravity of the offense alleged in the petition to have been committed by the minor (factor # 5 above), this bill would specify the following in statute:

  > " . . . the juvenile court may consider any relevant factor, including, but not limited to, the level of harm actually caused by the minor, and the minor's mental and emotional development."

Current law generally provides that a "determination that the minor is not a fit and proper subject to be dealt with under the juvenile court law may be based on any one or a combination of the factors (in current law enumerated above), . . . " (WIC § 707.)

This bill would revise these provisions to state that this determination may be based on any one or a combination of the areas of discretionary consideration added by this bill.

Current law generally provides a process, termed "reverse remand," under which a minor who has been referred to the adult criminal court for prosecution without a court order that the minor has been found unfit for the juvenile court may be remanded back to the juvenile court if the minor is convicted of a lesser offense, as specified. (Penal Code § 1170.17.)

This bill would incorporate the additional factors described above into this provision, as specified. *This bill* would provide that the circumstances and gravity of the offense for which the person has been convicted may include "but is not limited to, consideration of the actual behavior of the person, the mental state of the person, the person's degree of involvement in the crime, the level of harm actually caused by the person, and the person's mental and emotional development."

RECEIVERSHIP/OVERCROWDING CRISIS AGGRAVATION

For the past eight years, this Committee has scrutinized legislation referred to its jurisdiction for any potential impact on prison overcrowding. Mindful of the United States Supreme Court ruling and federal court orders relating to the state's ability to provide a constitutional level of health care to its inmate population and the related issue of prison overcrowding, this Committee has applied its "ROCA" policy as a content-neutral, provisional measure necessary to ensure that the Legislature does not erode progress in reducing prison overcrowding.

On February 10, 2014, the federal court ordered California to reduce its in-state adult institution population to 137.5% of design capacity by February 28, 2016, as follows:

- 143% of design bed capacity by June 30, 2014;
- 141.5% of design bed capacity by February 28, 2015; and,
- 137.5% of design bed capacity by February 28, 2016.

In February of this year the administration reported that as "of February 11, 2015, 112,993 inmates were housed in the State's 34 adult institutions, which amounts to 136.6% of design bed capacity, and 8,828 inmates were housed in out-of-state facilities. This current population is now below the court-ordered reduction to 137.5% of design bed capacity." (Defendants' February 2015 Status Report In Response To February 10, 2014 Order, 2:90-cv-00520 KJM DAD PC, 3-Judge Court, *Coleman v. Brown, Plata v. Brown* (fn. omitted)).

While significant gains have been made in reducing the prison population, the state now must stabilize these advances and demonstrate to the federal court that California has in place the "durable solution" to prison overcrowding "consistently demanded" by the court. (Opinion Re: Order Granting in Part and Denying in Part Defendants' Request For Extension of December 31, 2013 Deadline, NO. 2:90-cv-0520 LKK DAD (PC), 3-Judge Court, *Coleman v. Brown, Plata v. Brown* (2-10-14). The Committee's consideration of bills that may impact the prison population therefore will be informed by the following questions:

- Whether a proposal erodes a measure which has contributed to reducing the prison population;
- Whether a proposal addresses a major area of public safety or criminal activity for which there is no other reasonable, appropriate remedy;
- Whether a proposal addresses a crime which is directly dangerous to the physical safety of others for which there is no other reasonably appropriate sanction;
- Whether a proposal corrects a constitutional problem or legislative drafting error; and
- Whether a proposal proposes penalties which are proportionate, and cannot be achieved through any other reasonably appropriate remedy.

COMMENTS

1. Stated Need for This Bill

The author states:

> SB 382 would expand the existing fitness criteria used by judges when determining whether a juvenile offender should be tried in juvenile or adult

court, so that judges may consider more comprehensive information about the juvenile's ability to rehabilitate.

Before the passage of Proposition 21, youth in California were sent to the adult criminal justice system only after having a "fitness" hearing where a judge determined which justice system the youth should be sent to using specified criteria, known as fitness criteria. Currently judges determine whether a juvenile offender's case should be heard in juvenile or adult court in approximately 25 percent of cases. The criteria that is used when a fitness hearing does occur is outdated and not based on current law or cognitive science.

The decision to send a juvenile to the adult system is a very serious one. The juvenile court system is focused on rehabilitation and provides far more supports and opportunities for juvenile offenders compared to adult criminal facilities. Recent U.S. and California Supreme court cases, as well as cognitive science has found that juveniles are more able to reform and become productive members of society, if allowed to access the appropriate rehabilitation.

SB 382 would update the existing 5 criteria used by judges when determining the fitness of an individual to enter the adult criminal justice system to ensure judges consider, such as the actual behavior of the of the individual and their ability to grow, mature, and be rehabilitated. It is critical that judges have the most relevant information and full picture of an individual, before they make the critical decision of which jurisdiction a juvenile offender should be charged in.

2. Background: Jurisdiction Over Minors Alleged to Have Committed Crimes

The purpose of juvenile court law is to provide for the protection and safety of the public and each minor under the jurisdiction of the court and to preserve and strengthen family ties when possible, as specified. (WIC § 202 (a).) "Minors under the jurisdiction of the juvenile court as a consequence of delinquent conduct shall, in conformity with the interests of public safety and protection, receive care, treatment, and guidance that is consistent with their best interest, that holds them accountable for their behavior, and that is appropriate for their circumstances. This guidance may include punishment that is consistent with the rehabilitative objectives of this chapter." (WIC § 202(b).)

California law generally provides that persons under the age of 18 who are alleged to have committed a crime is within the jurisdiction of the juvenile court.[1] However, California law contains three discrete mechanisms for remanding minors to adult criminal court:

[1] An amendment in 1971 lowered the jurisdictional age from 21 to 18. (1971 Cal. Stats. 3766, c. 1748, § 66.)

- *Statutory or legislative waiver* requires that minors 14 years of age or older who are alleged to have committed specified murder and sex offenses be prosecuted in adult criminal court (WIC § 602(a));
- *Prosecutorial waiver* gives prosecutors the discretion to file cases against minors 14 and older, depending upon their age, alleged offense and offense history, in juvenile or adult criminal court (WIC § 707(d)); and
- *Judicial waiver* gives courts the discretion to evaluate whether a minor is unfit for juvenile court based on specified criteria. (WIC § 707 (a), (b) and (c).)

Prior to 2000, California was strictly a judicial waiver state; any minor tried in adult criminal court first had to be found unfit by the juvenile court. In 1999, SB 334 (Alpert) – Ch. 996, Stats. 1999, introduced statutory waiver in California for certain murder and sex offenses personally committed by a minor 14 years of age or older. On March 7, 2000, most provisions of SB 334 were chaptered out by the passage of Proposition 21, which enacted the waiver structure described above that is current law.

3. Fitness Criteria

The fitness criteria set forth in statute are the basis by which the juvenile court evaluates whether a minor is amenable to the care, treatment and training available through the juvenile court. A minor is not required to establish innocence in order to show amenability to the juvenile court system, and the fact that a minor did commit the charged offense does not automatically require a finding of unfitness. (People v. Superior Court (Jones) 18 Cal.4th 667, 682 (1998).) A finding of amenability must be based on evidence and supported by findings addressed to each and every one of the criteria. (Id. at 683.)

> Though the standards for determining a minor's fitness for treatment as a juvenile lack explicit definition . . . it is clear from the statute that the court must go beyond the circumstances surrounding the offense itself and the minor's possible denial of involvement in such offense. The court may consider a minor's past record of delinquency, and *must* take into account his behavior pattern as described in the probation officer's report. (*H. v. Superior Court* (1970) 3 Cal. 3d 709, 714 (citations omitted; emphasis in original.)

This bill would add discretionary, non-exclusive considerations for the court to consider in each of the five existing fitness criteria. None of the considerations proposed by this bill would appear to be inconsistent with the current criteria.

SHOULD THE CRITERIA FOR DETERMINING WHETHER A MINOR IF FIT OR UNFIT FOR JUVENILE COURT BE FURTHER DESCRIBED IN STATUTE, AS PROPOSED BY THIS BILL?

4. Support

The Youth Law Center, which supports this bill, states in part:

> In our experience, there is tremendous need for clarification of the fitness criteria. For example, the fifth criterion – the gravity and circumstances of the offense – is often misinterpreted to mean that any person alleged to have committed a serious offense must be found unfit. But that is not correct. In fact, even a young person who has committed a serious offense should be retained in juvenile court if he or she is capable of being rehabilitated, using the other fitness criteria. There is tremendous need to clarify this in the statutory criteria.
>
> Also, since the current fitness criteria were written, there is much more useful guidance on the impact of immaturity and adolescent development on behavior and capacity for change. A series of Supreme Court cases, culminating in *Miller v. Alabama* (2012) 567 U.S. ___, ___, 132 S.Ct. 2455, has recognized the importance of considering the hallmarks of youthfulness in making decisions about young people. This includes issues such as impulsivity, failure to appreciate risks and dangers, and peer pressure. The Supreme Court cases also highlight the transitory nature of adolescent delinquency – the fact that the vast majority of young people leave delinquency behind as they reach adulthood.

5. Technical Amendments

Senate Engrossing and Enrolling has submitted purely technical amendments that it asks the Committee to make.

-- END –